

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH CONLEY,

Petitioner,

v.

STANISLAUS COUNTY PUBLIC
DEFENDER'S OFFICE, et al.,

Respondents.

No. 1:22-cv-00680-ADA-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. No. 8)

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT TO
ENTER JUDGMENT AND CLOSE CASE

ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

Petitioner Joseph Conley is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 28, 2022, the assigned magistrate judge issued findings and recommendations to dismiss the petition for failure to exhaust state remedies. (Doc. No. 8.) Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within twenty-one (21) days after service. On July 20, 2022, petitioner responded to the findings and recommendations by lodging an amended petition. (Doc. No. 9.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a

1 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
2 magistrate judge's findings and recommendations are supported by the record and proper
3 analysis. It is clear from the pleadings that petitioner has not exhausted his state remedies by first
4 seeking relief in the state courts.

5 In addition, the court declines to issue a certificate of appealability. A state prisoner
6 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
7 his petition, and an appeal is allowed in only certain circumstances. *Miller-El v. Cockrell*, 537
8 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a certificate of
9 appealability is 28 U.S.C. § 2253, which provides as follows:

10 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
11 district judge, the final order shall be subject to review, on appeal, by the court of
appeals for the circuit in which the proceeding is held.

12 (b) There shall be no right of appeal from a final order in a proceeding to test
13 the validity of a warrant to remove to another district or place for commitment or
trial a person charged with a criminal offense against the United States, or to test
14 the validity of such person's detention pending removal proceedings.

15 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
appeal may not be taken to the court of appeals from—

16 (A) the final order in a habeas corpus proceeding in which the
17 detention complained of arises out of process issued by a State
court; or

18 (B) the final order in a proceeding under section 2255.

19 (2) A certificate of appealability may issue under paragraph (1) only if the
20 applicant has made a substantial showing of the denial of a constitutional
right.

21 (3) The certificate of appealability under paragraph (1) shall indicate which
22 specific issue or issues satisfy the showing required by paragraph (2).

23 If a court denies a petitioner's petition, the court may issue a certificate of appealability
24 only when a petitioner makes a substantial showing of the denial of a constitutional right. 28
25 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
26 "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
27 been resolved in a different manner or that the issues presented were 'adequate to deserve
28 encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting

Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

In the present case, the court finds that petitioner has not made the required substantial showing of the denial of a constitutional right to justify the issuance of a certificate of appealability. Reasonable jurists would not find the court's determination that petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Thus, the court declines to issue a certificate of appealability.

Accordingly,

1. The findings and recommendations issued on June 28, 2022, (Doc. No. 8) are adopted in full;
 2. The petition for writ of habeas corpus is dismissed without prejudice;
 3. The clerk of court is directed to enter judgment and close the case; and
 4. The court declines to issue a certificate of appealability.

This order terminates the action in its entirety.

IT IS SO ORDERED.

Dated: September 14, 2022

UNITED STATES DISTRICT JUDGE